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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/569,964

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Yuji Wachi

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KANESAKA BERNER AND PARTNERS LLP
1700 DIAGONAL RD
SUITE 310
ALEXANDRIA, VA 22314-2848

EXAMINER

LUONG, VINH

ART UNIT

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3682

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/569,964	Applicant(s) WACHI ET AL.	
	Examiner Vinh T. Luong	Art Unit 3682	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 February 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/28/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

1. The preliminary amendment filed on February 28, 2006 has been entered.
2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to because of the implied phrase "of the invention" and legal phraseology "means." Correction is required. See MPEP § 608.01(b).

4. The drawings are objected to because of the reasons, *inter alia*, listed below:

(a) FIGS. 5 and 6 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g) and pages 1-9 and 13 of the specification;

(b) It is unclear whether FIG. 7(a) or FIG. 7(b) is prior art or not. See Brief Description of the Drawings on page 7 of the specification. If FIG. 7(a) is prior art, FIG. 7(a) should be designated by the legend -- Prior Art --. Similarly, if FIG. 7(b) is prior art, FIG. 7(b) should be designated by the legend -- Prior Art --; and

(c) The drawings are not in compliance with 37 CFR 1.84. See Form PTO-948 attached.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure

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must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. *The objection to the drawings will not be held in abeyance.*

5. Claims 1-3 are objected to because of the following informalities: the claims have typographical or grammatical error(s), *e.g.*, "mid portion" in line 2 of Claim 1 should have been changed to -- mid-portion --. Appropriate correction is required.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear as to "a joining means" in Claim 1 joins which or what claimed elements together. Similarly, it is unclear as to "an engaging means" in same Claim 1 causes the engagement of which or what claimed elements together. See *TriMed Inc. v. Stryker Corp.*, 85 USPQ2d 1787 (Fed. Cir. 2008) and *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

It is unclear whether a confusing variety of terms, such as, *e.g.*, "a pivot-inhibiting control means" and "a shift-inhibiting control means" in Claim 1 refer to the same or different

things. See MPEP 608.01(o) and double inclusion in MPEP 2173.05(o). It is well settled that “[i]f one employs means-plus-function language in a claim, one must set forth in the specification an adequate disclosure showing what is meant by that language.” *In re Donaldson Co. Inc.*, 29 USPQ2d 1845, 1850 (Fed. Cir. 1994) and *In re Dossel*, 42 USPQ2d 1881, 1884 (Fed. Cir. 1997). Applicant is respectfully urged to identify each claimed means-plus-function with reference to the specification and drawings. See MPEP §§ 704.11(a) and 2181.

It is unclear whether the term that appears at least twice, e.g., “an abutting surface” in Claim 1 refers to the same or different things. See MPEP § 2173.05(o). Applicant is respectfully urged to identify each claimed element with reference to the specification and drawings. See MPEP §§ 704.11(a) and 2181.

No clear antecedent basis is seen for the term, e.g., “it” in Claim 2.

The use of alternative expression, such as, “tooth (teeth) or groove(s)” in Claim 3 renders said claim vague and indefinite.

The term “latchable” in Claims 2 and 3 is vague and indefinite in the sense that things which may be done are not required to be done. For example, in Claim 2, the connecting member 45 is latchable, but is not required structurally to be latched onto the catch member 47. See “discardable” in *Mathis v. Hydro Air Industries*, 1 USPQ2d 1513, 1527 (D.C. Calif. 1986), “crimpable” in *Application of Collier*, 158 USPQ 266 (CCPA 1968), “removable” in *In re Burke Inc.*, 22 USPQ2d 1368, 1372 (D.C. Calif. 1992), and “comparable” in *Ex parte Anderson*, 21 USPQ2d 1241, 1249 (BPAI 1992).

The term “abruptly” in Claim 1 is a relative term which renders the claim indefinite. The term “abruptly” is not defined by the claim, the specification does not provide a standard for

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ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear, *e.g.*, what degree of change is considered to “change abruptly.”

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

9. Claims 1 and 2, as best understood, are rejected under 35 U.S.C. 102(a) as being anticipated by admitted prior art (*i.e.*, Applicant’s FIGS. 5 and 6).

Regarding Claim 1, admitted prior art (hereinafter “APP”) described in the Background Art of the specification (and JP-A-2002-347590 cited as an X category reference in International Search Report of Applicant’s PCT Application) teaches a brake pedal apparatus 1 comprising:

a first lever member 2a₁ whose mid-portion is pivotably supported on a vehicle body 10 by a first pivot shaft 11;

a second lever member 2a₂ having a pedal 2 on an end thereof and being relatively pivotably connected to an end of the first lever member 2a₁ by a second pivot shaft 13, to which an input shaft 3a of a booster 3 or of a master cylinder 4 (FIG. 5) is pivotably coupled;

a pivot-inhibiting control means 15 for controlling pivoting of the first lever member so that the first lever member 2a₁ is inhibited from pivoting when a predetermined condition is not established while the first lever member 2a₁ is permitted to pivot when the predetermined condition is established; and a joining means 11, 13, 2a₇, 2a₈, *etc.* for causing the second lever member 2a₂ to pivot together with the first lever member 2a₁, with the first pivot shaft 11 being a

pivot center, when the first lever member 2a₁ is permitted to pivot, the brake pedal apparatus 1 characterized in that:

the pivot-inhibiting control means comprises an engaging means 15 provided on the first lever member 2a₁, and a shift-inhibiting control means 39 having an abutting surface 39a (FIG. 6(b)) onto which the engaging means 15 abuts and being for inhibiting the engaging means 15 from shifting so as to keep its engagement with the engaging means 15 when the predetermined condition is not established, and for permitting the engaging means 15 to shift so as to cancel its engagement with the engaging means 15 when the predetermined condition is established and the abutting surface 39a of the shift-inhibiting control means 39 is an abutting surface 39a whose shape does not change abruptly.

Regarding Claim 2, the joining means includes a catch member 11 provided on the first lever member 2a₁ and a connecting member 2a₈ provided on the second lever member 2a₂ and being *latchable* onto the catch member 11 and the connecting member 2a₈ is configured to be controlled by the shift-inhibiting control means 39 so that it does not latch onto the catch member 11 when the predetermined condition is not established while it latches onto the catch member 11 when the predetermined condition is established. *Ibid.* second paragraph, page 5 of the specification and FIG. 6(a).

10. Claim 3 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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11. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Troiano (catch member 30 and connecting member 34), Hayashihara et al. (FIGS. 1-6), Noboru et al. (FIGS. 1-5), Jeon (catch member 30 and connecting member 48, 32), and Bialk et al. (FIGS. 1-10).

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vinh T Luong/

Primary Examiner, Art Unit 3682